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8 **BEFORE THE**  
9 **CALIFORNIA BOARD OF ACCOUNTANCY**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

13 JAMES F. BERGER  
14 4 Old Spire Drive  
15 Ladera Ranch, CA 92694

16 Certified Public Accountant Certificate No. 25991

17 Respondent.

Case No. AC-2012-45

**DEFAULT DECISION AND ORDER**

[Gov. Code, §11520]

18  
19 FINDINGS OF FACT

20 1. On or about July 24, 2012, Complainant Patti Bowers, in her official capacity as the  
21 Executive Officer of the California Board of Accountancy, Department of Consumer Affairs,  
22 filed Accusation No. AC-2012-45 against James F. Berger (Respondent) before the California  
23 Board of Accountancy. (Accusation attached as Exhibit A.)

24 2. On or about May 19, 1978, the California Board of Accountancy (CBA or Board)  
25 issued Certified Public Accountant Certificate Number 25991 to Respondent James F. Berger.  
26 The certificate expired and was not valid during the period April 1, 2009, through June 15, 2009,  
27 because the renewal fee required by Business and Professions Code Section 5070.5 was not paid  
28

1 and because the declaration of compliance with continuing education requirements was not  
2 submitted by Respondent to the Board.

3 3. Effective June 16, 2009, the certificate was renewed through March 31, 2011, upon  
4 receipt of the renewal fee and declaration of compliance with continuing education requirements.

5 4. The certificate expired and was not valid during the period April 1, 2011, through  
6 September 11, 2011, because the renewal fee required by Business and Professions Code Section  
7 5070.5 was not paid and because the declaration of compliance with continuing education  
8 requirements was again not submitted by Respondent to the Board.

9 5. Effective September 12, 2011, the certificate was renewed through March 31, 2013,  
10 upon receipt of the renewal fee and declaration of compliance with continuing education  
11 requirements.

12 6. This lapse in licensure, however, pursuant to Business and Professions Code section  
13 118, subdivision (b), and Section 5109, does not deprive the CBA of its authority to institute or  
14 continue this disciplinary proceeding.

15 7. On or about July 30, 2012, Respondent was served by Certified and First Class Mail  
16 copies of Accusation No. AC-2012-45, Statement to Respondent, Notice of Defense, Request for  
17 Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at  
18 Respondent's address of record which, pursuant to California Code of Regulations, title 16,  
19 section 3, is required to be reported and maintained with the CBA. Respondent's address of  
20 record was and is: 4 Old Spire Drive, Ladera Ranch, CA 92694.

21 8. Service of the Accusation was effective as a matter of law under the provisions of  
22 Government Code section 11505, subdivision (c) and/or Business & Professions Code section  
23 124.

24 9. Government Code section 11506 states, in pertinent part:

25 (c) The respondent shall be entitled to a hearing on the merits if the respondent  
26 files a notice of defense, and the notice shall be deemed a specific denial of all parts  
27 of the accusation not expressly admitted. Failure to file a notice of defense shall  
28 constitute a waiver of respondent's right to a hearing, but the agency in its discretion  
may nevertheless grant a hearing.

10. Respondent failed to file a Notice of Defense within 15 days after service upon him of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No. AC-2012-45.

11. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

12. Pursuant to its authority under Government Code section 11520, the CBA finds Respondent is in default. The CBA will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigative reports, exhibits and statements contained therein on file at the CBA's offices regarding the allegations contained in Accusation No. AC-2012-45, finds that the charges and allegations in Accusation No. AC-2012-45, are separately and severally, found to be true and correct by clear and convincing evidence.

13. Taking official notice of its own internal records, pursuant to Business and Professions Code section 5107, it is hereby determined that the reasonable costs for Investigation and Enforcement of this matter is \$9,006.81 as of October 15, 2012.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent James F. Berger has subjected his Certified Public Accountant Certificate No. 25991 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The California Board of Accountancy is authorized to revoke Respondent's Certified Public Accountant Certificate based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Practice as Certified Public Accountant Without Valid License (Business and Professions Code sections 5100, subdivision (g), and 5050, subdivision (a));

///

1 b. Misrepresentation of Material Fact on License Renewal (Business and Professions  
2 Code sections 5100, subdivision (b), and 5100, subdivision (g), California Code of Regulations,  
3 title 16, section 89, subdivision (k));

4 c. Failure to Complete Continuing Education Requirements (Business and Professions  
5 Code section 5100, subdivision (g), California Code of Regulations, title 16, sections 87 and  
6 87.8));

7 d. Failure to Respond to Board Inquiry (Business and Professions Code section 5100,  
8 subdivision (g), California Code of Regulations, title 16, section 52, subdivision (a)).


9  
10 **ORDER**

11 **IT IS SO ORDERED** that Certified Public Accountant Certificate No. 25991, heretofore  
12 issued to Respondent James F. Berger, is revoked.

13 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a  
14 written motion requesting that the Decision be vacated and stating the grounds relied on within  
15 seven (7) days after service of the Decision on Respondent. The agency in its discretion may  
16 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

17 This Decision shall become effective on December 26, 2012.

18 It is so ORDERED November 24, 2012.

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20   
21 FOR THE CALIFORNIA BOARD OF  
22 ACCOUNTANCY  
23 DEPARTMENT OF CONSUMER AFFAIRS

24 default decision\_LIC.rtf  
DOJ Matter ID:SD2012703216

25 Attachment:  
26 Exhibit A: Accusation  
27  
28

## Exhibit 1

1 KAMALA D. HARRIS  
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2 JAMES M. LEDAKIS  
Supervising Deputy Attorney General  
3 RON ESPINOZA  
Deputy Attorney General  
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*Attorneys for Complainant*

8  
9 **BEFORE THE**  
**CALIFORNIA BOARD OF ACCOUNTANCY**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 JAMES F. BERGER  
4 Old Spire Drive  
13 Ladera Ranch, CA 92694

Case No. AC-2012-45

**A C C U S A T I O N**

14 Certified Public Accountant Certificate No. 25991

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as  
20 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

21 2. On or about May 19, 1978, the California Board of Accountancy (CBA or Board)  
22 issued Certified Public Accountant Certificate Number 25991 to James F. Berger (Respondent).  
23 The certificate expired and was not valid during the period April 1, 2009, through June 15, 2009,  
24 because the renewal fee required by Business and Professions Code Section 5070.5 was not paid  
25 and because the declaration of compliance with continuing education requirements was not  
26 submitted by Respondent to the Board.

27 3. Effective June 16, 2009, the certificate was renewed through March 31, 2011, upon  
28 receipt of the renewal fee and declaration of compliance with continuing education requirements.

4. The certificate expired and was not valid during the period April 1, 2011, through September 11, 2011, because the renewal fee required by Business and Professions Code Section 5070.5 was not paid and because the declaration of compliance with continuing education requirements was again not submitted by Respondent to the Board.

5. Effective September 12, 2011, the certificate was renewed through March 31, 2013, upon receipt of the renewal fee and declaration of compliance with continuing education requirements.

## JURISDICTION

6. This Accusation is brought before the California Board of Accountancy, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

7. Section 5109 of the Code states:

The expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to practice public accountancy by operation of law or by order or decision of the board or a court of law, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to commence or proceed with any investigation of or action or disciplinary proceeding against the licensee, or to render a decision suspending or revoking the license.

8. Section 5050 of the Code states:

(a) Except as provided in subdivisions (b) and (c) of this section, in subdivision (a) of Section 5054, and in Section 5096.12, no person shall engage in the practice of public accountancy in this state unless the person is the holder of a valid permit to practice public accountancy issued by the board or a holder of a practice privilege pursuant to Article 5.1 (commencing with Section 5096).

(b) Nothing in this chapter shall prohibit a certified public accountant, a public accountant, or a public accounting firm lawfully practicing in another state from temporarily practicing in this state incident to practice in another state, provided that an individual providing services under this subdivision may not solicit California clients, may not assert or imply that the individual is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. A firm providing services under this subdivision that is not registered to practice public accountancy in California may not solicit California clients, may not assert or imply that the firm is licensed to practice public accountancy in California, and may not engage in the development, implementation, or marketing to California consumers of any abusive tax avoidance transaction, as defined in subdivision (c) of Section 19753 of the Revenue and Taxation Code. This subdivision shall become inoperative on January 1, 2011.

1 (c) Nothing in this chapter shall prohibit a person who holds a valid and current  
2 license, registration, certificate, permit, or other authority to practice public  
3 accountancy from a foreign country, and lawfully practicing therein, from temporarily  
engaging in the practice of public accountancy in this state incident to an engagement  
in that country, provided that:

4 (1) The temporary practice is regulated by the foreign country and is performed  
5 under accounting or auditing standards of that country.

6 (2) The person does not hold himself or herself out as being the holder of a  
7 valid California permit to practice public accountancy or the holder of a practice  
privilege pursuant to Article 5.1 (commencing with Section 5096).

8 9. Section 5100 states, in relevant part:

9 After notice and hearing the board may revoke, suspend, or refuse to renew any  
10 permit or certificate granted under Article 4 (commencing with Section 5070) and  
11 Article 5 (commencing with Section 5080), or may censure the holder of that permit  
or certificate for unprofessional conduct that includes, but is not limited to, one or any  
combination of the following causes:

12 . . . .

13 (b) A violation of Section 478, 498, or 499 dealing with false statements or  
14 omissions in the application for a license, in obtaining a certificate as a certified  
public accountant, in obtaining registration under this chapter, or in obtaining a  
15 permit to practice public accountancy under this chapter.

16 . . . .

17 (g) Willful violation of this chapter or any rule or regulation promulgated by the  
18 board under the authority granted under this chapter.

19 . . . .

20 10. Section 498 of the Code states:

21 A board may revoke, suspend, or otherwise restrict a license on the ground that  
22 the licensee secured the license by fraud, deceit, or knowing misrepresentation of a  
23 material fact or by knowingly omitting to state a material fact.

## 24 REGULATIONS

25 11. California Code of Regulations, title 16, section 52, states, in relevant part:

26 (a) A licensee shall respond to any inquiry by the Board or its appointed  
27 representatives within 30 days. The response shall include making available all files,  
28 working papers and other documents requested.

. . . .

(d) A licensee shall provide true and accurate information and responses to  
questions, subpoenas, interrogatories or other requests for information or documents  
and not take any action to obstruct any Board inquiry, investigation, hearing or  
proceeding.



1 12. California Code of Regulations, title 16, section 87, states, in relevant part:

2 (a) 80 Hours.

3 As a condition for renewing a license in an active status, a licensee shall  
4 complete at least 80 hours of qualifying continuing education as described in Section  
5 88 in the two-year period immediately preceding license expiration, and meet the  
6 reporting requirements described in Section 89(a). A licensee engaged in the practice  
7 of public accountancy as defined in Section 5051 of the Business and Professions  
8 Code is required to hold a license in an active status. No carryover of continuing  
9 education is permitted from one license renewal period to another.

10 ....

11 (b) Ethics Continuing Education Requirement

12 A licensee renewing a license in an active status after December 31, 2009 shall  
13 complete four hours of the 80 hours of continuing education required pursuant to  
14 subsection (a) in course subject matter specified pertaining to the following: a review  
15 of nationally recognized codes of conduct emphasizing how the codes relate to  
16 professional responsibilities; case-based instruction focusing on real-life situational  
17 learning; ethical dilemmas facing the accounting profession; or business ethics,  
18 ethical sensitivity, and consumer expectations. Courses must be a minimum of one  
19 hour as described in Section 88.2.

20 (c) Government Auditing Continuing Education Requirement.

21 A licensee who engages in planning, directing, conducting substantial portions  
22 of field work, or reporting on financial or compliance audits of a governmental  
23 agency shall complete 24 of the 80 hours required pursuant to subsection (a) in the  
24 areas of governmental accounting, auditing or related subjects. This continuing  
25 education shall be completed in the same two-year license renewal period as the  
26 report is issued. A governmental agency is defined as any department, office,  
27 commission, authority, board, government-owned corporation, or other independent  
28 establishment of any branch of federal, state or local government. Related subjects are  
those which maintain or enhance the licensee's knowledge of governmental  
operations, laws, regulations or reports; any special requirements of governmental  
agencies; subjects related to the specific or unique environment in which the audited  
entity operates; and other auditing subjects which may be appropriate to government  
auditing engagements. A licensee who meets the requirements of this subsection shall  
be deemed to have met the requirements of subsection (d).

29 ....

30 (e) A licensee who must complete continuing education pursuant to subsections  
31 (c) and/or (d) of this section shall also complete an additional eight hours of  
32 continuing education specifically related to the detection and/or reporting of fraud in  
33 financial statements. This continuing education shall be part of the 80 hours of  
34 continuing education required by subsection (a), but shall not be part of the  
35 continuing education required by subsections (c) or (d).

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(g) Failure to Comply.

A licensee's willful failure to comply with the requirements of this section shall constitute cause; for disciplinary action pursuant to Section 5100(g) of the Accountancy Act.

13. California Code of Regulations, title 16, section 87.8 states:

(a) In order to renew a license in an active status after December 31, 2009, a licensee shall, within the six years preceding the license expiration date, complete a continuing education course on the provisions of the California Accountancy Act and the California Board of Accountancy Regulations specific to the practice of public accountancy in California emphasizing the provisions applicable to current practice situations. The course also will include an overview of historic and recent disciplinary actions taken by the Board, highlighting the misconduct which led to licensees being disciplined. The course shall be a minimum of two hours, and a licensee shall select from a list of Board-approved courses. The two hours can be counted towards the 80 hours required pursuant to Section 87.

(b) A licensee shall report completion of the Regulatory Review course at the time of renewal. A licensee, licensed prior to the implementation of Section 87.8, shall maintain their existing reporting date used for the professional conduct and ethics requirement to report the completion of the Regulatory Review course.

14. California Code of Regulations, title 16, section 89 states, in relevant part:

....

(k) A licensee's willful making of any false or misleading statement, in writing, regarding his/her continuing education shall constitute cause for disciplinary action pursuant to section 5100(g) of the Accountancy Act.

COST RECOVERY

15. Section 5107, subdivision (a), states:

The executive officer of the board may request the administrative law judge, as part of the proposed decision in a disciplinary proceeding, to direct any holder of a permit or certificate found to have committed a violation or violations of this chapter to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees. The board shall not recover costs incurred at the administrative hearing.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 **(Practice as Certified Public Accountant Without Valid License)**

3 16. Respondent is subject to disciplinary action under Business and Professions Code  
4 section 5100, subdivision (g), in conjunction with Section 5050, subdivision (a), in that  
5 Respondent willfully practiced and held himself out as a Certified Public Accountant at a time  
6 when he failed to have a valid license. The circumstances are as follows:

7 A. Respondent's license as a Certified Public Accountant (CPA) expired on  
8 March 31, 2011, and was not renewed for five months until September 12, 2011. Although  
9 Respondent's license was expired and was not valid, Respondent submitted a tax return (Form  
10 1040) on behalf of a client to the Internal Revenue Service (IRS) on May 21, 2011, holding  
11 himself out as a CPA.

12 **SECOND CAUSE FOR DISCIPLINE**

13 **(Misrepresentation of Material Fact on License Renewal)**

14 17. Respondent is subject to disciplinary action under Business and Professions Code  
15 section 5100, subdivision (b), and Section 5100, subdivision (g), in conjunction with California  
16 Code of Regulations, title 16, section 89, subdivision (k), in that he knowingly made a  
17 misrepresentation of material fact on his 2011 Certified Public Accountant License Renewal  
18 Application by stating, under penalty of perjury, that he had completed the required continuing  
19 education, when, in fact, he had not. The circumstances are as follows:

20 A. On his September 12, 2011, license renewal application, Respondent marked  
21 that he was renewing as an "active" licensee and that he had completed the required number of  
22 hours of continuing education. Respondent claimed on his renewal application that he had  
23 attended a Regulatory Review course on May 25, 2010, with continuing education provider  
24 Financial Education Resources (FER). However, after reviewing its records, FER confirmed that  
25 although enrolled, Respondent never attended the class.

26 B. Respondent stated on his 2011 license renewal application that he had attended  
27 fraud continuing education courses with FER. However, after reviewing its records, FER  
28 confirmed that Respondent had never enrolled in any of its fraud continuing education courses.

1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Failure to Complete Continuing Education Requirements)**

3 18. Respondent is subject to disciplinary action under Business and Professions Code  
4 section 5100, subdivision (g), in conjunction with California Code of Regulations, title 16,  
5 sections 87 and 87.8, in that Respondent failed to complete continuing education requirements for  
6 his license renewal. The circumstances are as follows:

7 A. For his 2011 license renewal period, Respondent was required to complete 80  
8 hours of continuing education. Within the 80 hours, Respondent was required to complete 24  
9 hours in governmental accounting, auditing or related subjects, and four hours of ethics.  
10 Respondent was also required to complete eight hours related to the detection and/or reporting of  
11 fraud in financial statements, and a two-hour Regulatory Review course. However, after review  
12 of the certificates of completion provided by Respondent for his continuing education, as well as  
13 contacting his continuing education provider, it was found that Respondent was deficient two hours  
14 of governmental auditing, six hours of fraud, four hours of ethics, and two hours of regulatory review  
15 continuing education.

16 **FOURTH CAUSE FOR DISCIPLINE**

17 **(Failure to Respond to Board Inquiry)**

18 19. Respondent is subject to disciplinary action under Business and Professions Code  
19 section 5100, subdivision (g), in conjunction with California Code of Regulations, title 16,  
20 section 52, subdivision (a), for failing to respond to the Board's inquiry regarding completion of  
21 his continuing education requirements. The circumstances are as follows:

22 A. On or about January 18, 2012, the Board sent Respondent an inquiry letter requesting  
23 information and responses to questions regarding allegations that Respondent failed to attend  
24 certain continuing education courses as claimed. The Board's inquiry letter requested a response  
25 from Respondent within 30 days. No response was ever received from Respondent.

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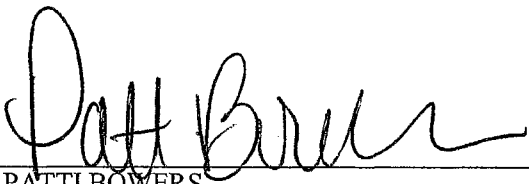
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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the California Board of Accountancy issue a decision:

1. Revoking or suspending or otherwise imposing discipline upon Certified Public Accountant Certificate Number 25991 issued to James F. Berger;
2. Ordering James F. Berger to pay the California Board of Accountancy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 5107;
3. Taking such other and further action as deemed necessary and proper.

DATED: July 24, 2012   
PATTI BOWERS  
Executive Officer  
California Board of Accountancy  
Department of Consumer Affairs  
State of California  
*Complainant*

SD2012703216  
accusation.rtf